

DISTRICT OF COLUMBIA
DOH Office of Adjudication and Hearings

DISTRICT OF COLUMBIA
DEPARTMENT OF HEALTH
Petitioner,

v.

EAGLE ROCK ENTERPRISES, INC.
Respondent

Case Nos.: I-00-11278
I-00-11286

FINAL ORDER

I. Introduction

On November 28, 2001, the Government served a Notice of Infraction on Respondent Eagle Rock Enterprises, Inc., alleging a violation of 20 DCMR 900.1, which prohibits, with certain exceptions, motor vehicles from idling their engines for more than three minutes while parked, stopped or standing. The Notice of Infraction alleged that the violation occurred on November 26, 2001 in the 1200 block of 5th Street N.E., and sought a fine of \$500.

Respondent did not file an answer to the Notice of Infraction within the required twenty days after service (fifteen days plus five additional days for service by mail pursuant to D.C. Official Code §§ 2-1802.02(e) and 2-1802.05). Accordingly, on January 7, 2002, this administrative court issued an order finding Respondent in default, assessing the statutory penalty of \$500 required by D.C. Official Code § 2-1801.04(a)(2)(A), and requiring the Government to serve a second Notice of Infraction.

The Government then served a second Notice of Infraction on January 14, 2002. Respondent also did not answer that notice within twenty days of service. Accordingly, on March 21, 2002, a Final Notice of Default was issued, finding Respondent in default on the second Notice of Infraction and assessing total statutory penalties of \$1,000 pursuant to D.C. Official Code §§ 2-1801.04(a)(2)(A) and 2-1801.04(a)(2)(B). The Final Notice of Default also set April 10, 2002, as the date for an *ex parte* proof hearing, and afforded Respondent an opportunity to appear at that hearing to contest liability, fines, penalties or fees. Copies of both the first and second Notices of Infraction were attached to the Final Notice of Default.

On April 10, 2002, the Government, represented by Kimberly Katzenbarger, Esq., appeared for the hearing. There was no appearance for the Respondent. Based upon the testimony at the hearing, my evaluation of the credibility of the Government's witness and the entire record in this case, I now make the following findings of fact and conclusions of law.

II. Findings of Fact

On November 26, 2001, Neil Williams, an inspector employed by the Department of Health, observed a truck owned by Respondent parked in the 1200 block of 5th Street, N.E. with its engine idling. No driver was present in the truck, and its engine remained idling for at least seven minutes, between 12:46 and 12:53 PM. Mr. Williams copied identifying information from the truck, and later determined from U.S. Department of Transportation records that Respondent Eagle Rock Enterprises, Inc., owned the truck and that Respondent's business address is 4303 Meadow View, North Bergen, NJ 07047.

The Notices of Infraction were served by certified mail addressed to Respondent's last known business address on November 28, 2001 and January 14, 2002, as evidenced by the

certificates of service signed by the Government's representative. Respondent actually received the notices, as evidenced by the certified mail receipts in evidence. Petitioner's Exhibits 103-04. This administrative court's orders of January 7 and March 21, 2002 were sent to Respondent's last known business address by priority mail and were actually received by Respondent, as evidenced by the delivery confirmation receipts in the record.

Respondent has provided no evidence of the reasons for its failure to respond to the Notices of Infraction.

III. Conclusions of Law

A. Notice to Respondent

Respondent had adequate notice of both the charges and the hearing date as mandated by the Due Process Clause and the Civil Infractions Act, D.C. Official Code § 2-1802.05. The Notices of Infraction were sent to Respondent's last known business address as determined from government records and Respondent actually received both notices. The record also shows that Respondent actually received the orders of January 7 and March 21, which were sent to the same address. This is sufficient to demonstrate that Respondent received proper notice of both the Government's charges and of the hearing date. *Dusenbery v. United States*, 122 S. Ct. 694, 700-02 (2002); *Mennonite Board of Missions v. Adams*, 462 U.S. 791, 800 (1983); *McCaskill v. District of Columbia Dep't of Employment Servs.*, 572 A.2d 443, 445 (D.C. 1990); *Carroll v. District of Columbia Dep't of Employment Servs.*, 487 A.2d 622, 624 (D.C. 1985).

B. Respondent's Violation of § 900.1

By idling the engine of a truck for more than three minutes while parked, Respondent violated 20 DCMR 900.1. The authorized fine for that violation is \$500 for a first offense. 16 DCMR 3224.3(aaa), as added by the Motor Vehicle Excessive Idling Fine Increase Amendment Act of 1999, D.C. Law 13-35 (Effective October 7, 1999); 46 D.C. Reg. 8699 (October 29, 1999); 46 D.C. Reg. 6017 (July 23, 1999).

C. The Statutory Penalty for Failing to Answer the Notices of Infraction

The Civil Infractions Act, D.C. Official Code §§ 2-1802.02(f) and 2-1802.05, requires the recipient of a Notice of Infraction to demonstrate “good cause” for failing to answer it within twenty days of the date of service by mail. If a party can not make such a showing, the statute requires that a penalty equal to the amount of the proposed fine must be imposed. D.C. Official Code §§ 2-1801.04(a)(2)(A), 2-1802.02(f). If a recipient fails to answer a second Notice of Infraction without good cause, the penalty doubles. D.C. Official Code §§ 2-1801.04(a)(2)(B), 2-1802.02(f). Because Respondent introduced no evidence of the reasons for its failure to answer the Notices of Infraction, there is no basis for concluding that it had good cause for its failure to answer the Notices of Infraction, and no basis to suspend or reduce the statutory penalty of \$1,000.

IV. Order

Based upon the foregoing findings of fact and conclusions of law, it is, this _____ day of _____, 2002:

ORDERED, that Respondent shall pay a total of **ONE THOUSAND FIVE HUNDRED DOLLARS (\$1,500)** in accordance with the attached instructions within twenty (20) calendar days of the mailing date of this Order (15 days plus 5 days service time pursuant to D.C. Official Code §§ 2-1802.04 and 2-1802.05); and it is further

ORDERED, that if Respondent fails to pay the above amount in full within twenty (20) calendar days of the date of mailing of this Order, interest shall accrue on the unpaid amount at the rate of 1 ½% per month or portion thereof, starting from the date of this Order, pursuant to D.C. Official Code § 2-1802.03 (i)(1); and it is further

ORDERED, that failure to comply with the attached payment instructions and to remit a payment within the time specified will authorize the imposition of additional sanctions, including the suspension of Respondent's licenses or permits pursuant to D.C. Official Code § 2-1802.03(f), the placement of a lien on real and personal property owned by Respondent pursuant to D.C. Official Code § 2-1802.03(i) and the sealing of Respondent's business premises or work sites pursuant to D.C. Official Code § 2-1801.03(b)(7).

/s/ **04/15/02**

John P. Dean
Administrative Judge